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**CATHY A. CATTERSON, CLERK
U.S. COURT OF APPEALS**

NOT FOR PUBLICATION

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

In re: DAWN JEAN KYLE,

Debtor,

CLINTON IRVING, Speical
Administrator for the ESTATE OF
MARIE FRANCES HOLT; DAWN JEAN
KYLE; DAVID KYLE,

Appellants,

v.

CAROLYN A. DYE, Chapter 7 Trustee,

Appellee.

No. 04-56618

BAP No. CC-04-01307-BMaK

MEMORANDUM^{*}

Appeal from the Ninth Circuit
Bankruptcy Appellate Panel
Klein, Marlar, and Brandt, Bankruptcy Judges, Presiding

Argued and Submitted February 16, 2006
Pasadena, California

Before: CANBY, KLEINFELD, and BERZON, Circuit Judges.

^{*} This disposition is not appropriate for publication and may not be cited to or by the courts of this circuit except as provided by 9th Cir. R. 36-3.

Dawn Kyle appeals an order granting interim compensation to counsel for the bankruptcy trustee. This court has no jurisdiction to hear appeals from interlocutory orders of the bankruptcy court. 28 U.S.C. § 158(d); *Lievsay v. W. Fin. Sav. Bank (In re Lievsay)*, 118 F.3d 661 (9th Cir. 1997). Interim compensation awards are generally interlocutory orders, because by their nature they are not the final determination of compensation. *See In re Yermakov*, 718 F.2d 1465, 1469 (9th Cir. 1983).

Kyle argues, however, that nothing will remain in her estate after the homestead exemption and the interim fee award are paid, so the interim award is as a practical matter final. We need not decide whether the estate is in fact exhausted, as the interim fee award would remain nonfinal, and therefore not currently appealable, even if it were. A court remains free to reconsider interlocutory orders before it issues final judgment, based, *inter alia*, on later developments. *See City of L.A. v. Santa Monica Baykeeper*, 254 F.3d 882, 885 (9th Cir. 2001). In this case, for example, after the bankruptcy court issued the interim compensation order, the Bankruptcy Appellate Panel (BAP) determined that Kyle was entitled to the homestead exemption. In so deciding, the BAP had occasion to examine the litigation choices made by the trustee's counsel. Today, in the appeal from the BAP's order in that related case (No. 04-57195), we

approve that holding, and the BAP's reasoning. Our holding as to the homestead exemption and examination of the representation provided by the trustee's counsel may be pertinent to a final determination of the reasonableness of the fee request. The final compensation amount could, as a result, be different from the interim compensation amount for the period covered by the interim award.

Consequently, even if there is no request for additional fees, we cannot say that the amount assessed in the interim fees order constitutes the final amount that will be awarded to the trustee's counsel. For that reason, Kyle's argument that the interim award is, as a practical matter, final is unavailing even if nothing remains of her estate after the interim compensation award and the homestead exemption are paid.

Appeal DISMISSED.